



**DEPARTMENT OF THE ARMY**  
US ARMY CORPS OF ENGINEERS  
3636 N CENTRAL AVE SUITE 900  
PHOENIX AZ 85012-1939

April 25, 2014

Jason Bahe, Project Manager  
Pima County Department of Transportation  
201 N. Stone Avenue 4th Floor  
Tucson, Arizona 85701

**SUBJECT:** Preliminary Jurisdictional Determination regarding geographic jurisdiction

Dear Mr. Bahe:

I am responding to your request (File No. SPL-2014-00196-KWG) dated March 13, 2014 for a preliminary Department of the Army jurisdictional determination (JD) for the Sunset Road: Silverbell Road to I-10 Eastbound project site (-111.048808/32.305666) located within the city of Tucson, Pima County, Arizona.

The Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, a permit would likely be required. The first test determines whether or not the proposed project is located within the Corps' geographic jurisdiction (i.e., it is within a water of the United States). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act. This evaluation pertains only to geographic jurisdiction.

Based on available information, I have preliminarily determined waters of the U.S. may be present on the Sunset Road: Silverbell Road to I-10 Eastbound project site in the approximate locations noted on the enclosed drawing(s). The basis for this finding can be found on the enclosed Preliminary Jurisdictional Determination (JD) form. Please be aware preliminary JDs are non-binding indications of the presence of waters of the U.S., including wetlands, on a parcel, are advisory in nature and may not be appealed. If you accept this determination, please sign and date this form and return to the issuing office within two weeks of receipt. However, you are hereby informed of your option to request an approved jurisdictional determination, which may be appealed. Note that for purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S.

Preliminary and approved jurisdictional determinations are fully explained in the enclosed Regulatory Guidance Letter 08-02, dated June 26, 2008. Further, proffered individual permits

(and all terms and conditions contained therein), individual permit denials, and any jurisdictional issues may also be appealed pursuant to 33 CFR Part 331.

This determination was conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the Sunset Road: Silverbell Road to I-10 Eastbound project site identified in your request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

Thank you for participating in the regulatory program. If you have any questions, please contact Kevin W. Grove at 602-230-6957 or via e-mail at [Kevin.W.Grove@usace.army.mil](mailto:Kevin.W.Grove@usace.army.mil). Please complete the customer survey form located at the link provided below which would help me to evaluate and improve the regulatory experience for others.  
[http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey)

Sincerely,



Sallie Diebolt  
Chief, Arizona Branch  
Regulatory Division

Enclosure(s)

- 1) Preliminary Jurisdictional Determination Form
- 2) Preliminary Jurisdictional Determination Maps

# PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

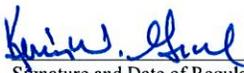
District Office	L.A. District/AZ	File/ORM #	SPL-2014-00196-KWG	PJD Date:	April 23, 2014
State	AZ	City/County	Tucson/Pima	Name/	Jason Bahe
Nearest Waterbody:	Santa Cruz River			Address of Person	Pima County Department of Transportation 201 N. Stone Ave., 4th Floor
Location: TRS, Lat/Long or UTM:	Approximate midpoint: 495661.7mE, 3574432.4mN, UTM Zone 12N, NAD 83			Requesting PJD	Tucson, AZ 85701-1207

Identify (Estimate) Amount of Waters in the Review Area:	Name of Any Water Bodies on the Site Identified as	Tidal:	
Non-Wetland Waters:	Section 10 Waters:	Non-Tidal:	
<input checked="" type="checkbox"/> (see p. 2) linear ft	Stream Flow:		
<input type="checkbox"/> width 4.045 acres	N/A		
Wetlands: 0.115 acre(s)	Cowardin Class:		
	Palustrine, emergent		
	<input type="checkbox"/> Office (Desk) Determination	Date of Field Trip:	5-Dec-2013
	<input checked="" type="checkbox"/> Field Determination:		

**SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite quad name:
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is:
- Photographs:  Aerial (Name & Date):   
 Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Other information (please specify):

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

 Signature and Date of Regulatory Project Manager (REQUIRED)	 Signature and Date of Person Requesting Preliminary JD (REQUIRED, unless obtaining the signature is impracticable)
------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Appendix A - Sites

District Office L.A. District / AZ File/ORM # SPL-2014-00196-KW6 PJD Date: April 24, 2014  
 State AZ City/County Tucson/Pima Person Requesting PJD Jason Bahe

Site Number	Latitude	Longitude	Cowardin Class	Est. Amount of Aquatic Resource in Review Area	Class of Aquatic Resource
Wash 1*	32.305666N	-111.048808W	Riverine	3.566	Non-Section 10 non-wetl;
Wash 2	32.308668N	-111.051901W	Riverine	0.008	Non-Section 10 non-wetl;
Wash 3	32.307687N	-111.051372W	Riverine	0.008	Non-Section 10 non-wetl;
Wash 4	32.306468N	-111.050774W	Riverine	0.112	Non-Section 10 non-wetl;
Wash 5	32.306133N	-111.050645W	Riverine	0.106	Non-Section 10 non-wetl;
Wash 6	32.307030N	-111.050486W	Riverine	0.201	Non-Section 10 non-wetl;

**Notes:**

\*Wash 1 (Santa Cruz River) is listed separately from wetlands to show that there are wetlands and non-wetlands associated with the river, but all wetlands were at or below the ordinary high water mark of Wash 1 (Santa Cruz River). Therefore, the total acreage of Waters associated with the Santa Cruz River is 3.566 acres of non-wetland Waters + 0.115 acre of wetlands, for a total of 3.681 acres of Waters. The latitude and longitude listed for the wetlands are the latitude and longitude for Wash 1 because the wetlands are distributed along the river.

Wash 7	32.303284N	-111.048297W	Riverine	0.014	Non-Section 10 non-wetland
Wash 8	32.303397N	-111.048600W	Riverine	0.004	Non-Section 10 non-wetland
Wash 9	32.305465N	-111.048954W	Riverine	0.008	Non-Section 10 non-wetland
Wash 10	32.306133N	-111.050122W	Riverine	0.005	Non-Section 10 non-wetland
Wash 11	32.306182N	-111.049952W	Riverine	0.003	Non-Section 10 non-wetland
Wash 12	32.304758N	-111.048058W	Riverine	0.006	Non-Section 10 non-wetland
Santa Cruz Wetland	32.305666N	-111.048808W	Palustrine, emergent	0.115	Non-Section 10 wetlands

The survey area contained perennial and ephemeral Waters of the United States:

Perennial (Wash 1, Santa Cruz River), approximately 3.681 acres (including 0.115 acre of wetlands)

Ephemeral (Washes 2-12), approximately 0.475 acre

Corps navigable waters' study: "CESPL-RG-A MFR: Determination of Two Reaches of the Santa Cruz River as Traditional Navigable Waters" (May 23, 2008)

*KB*